

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5350 of 1998

with

SPECIAL CIVIL APPLICATION No 5351 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATIALA STEEL CASTING PVT. LTD

Versus

SIHOR NAGAR PALIKA

Appearance:

1. Special Civil Application No. 5350 of 1998
MR RD DAVE for Petitioner
MR HARIN P RAVAL for Respondent No. 1
MR AMAR D MITHANI for Respondent No. 2
2. Special Civil ApplicationNo 5351 of 1998
MR RD DAVE for Petitioner
MR HARIN P RAVAL for Respondent No. 1
MR AMAR D MITHANI for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 07/12/98

ORAL (COMMON) JUDGEMENT

1. Rule. Mr. Harin P. Raval for respondent No.1 and Mr. Amar D. Mithani for respondent No.2 appear and waive service of rule in both the petitions. With the consent of learned advocates of the parties, both these petitions are taken up for final hearing today.

2. Since both these petitions contain common question of law they are heard together and disposed of by this common judgment.

3. As far as petition being Spl.C.A.No.5350/98 is concerned, the petitioner was allotted plot No.131, Phase-II by the GIDC, Sihor on 16.7.92. On 20.3.92 the petitioner was granted provisional registration as SSI unit. On 6.1.1994 petitioner was granted permanent registration as SSI unit. It is the case of the petitioner that the petitioner started production with effect from 6.1.1994 and on 7.12.1992 the petitioner applied to the erstwhile Sihor Nagar Panchayat for exemption from payment of octroi under Rule 36 of Gujarat Gram & Nagar Panchayats Taxes & Fees Rules, 1964 (hereinafter to be referred to as "Rules"). On 15.5.1993 the erstwhile Sihor Panchayat passed a resolution granting exemption from payment of octroi to the petitioner for a period of 5 years from 1.3.93 to 28.2.95. The petitioner was communicated the said resolution by letter dated 16.6.93. After enjoying the benefits of said exemption from payment of octroi for considerable time, the petitioner, for the first time, on 2.10.97 addressed a letter to the respondent-Municipality (since the erstwhile Panchayat is converted into Nagarpalika in the meantime) making a request to extend the said benefit for a period of 7 years as the petitioner has started production with effect from 6.1.1994. In fact, the petitioner on 9.5.98 issued a notice through advocate to the respondent-Municipality making the same request. However, the respondent-Municipality on 3.6.98 rejected the said request for extending the benefit of exemption from payment of octroi.

4. As far as second petition being Spl.C.A.No.51/98 is concerned, the petitioner has acquired the industrial plot, Phase I in GIDC, Sihor on 26.6.91. The petitioner was granted provisional SSI registration on 7.7.92 and on 27.11.1994 the petitioner was granted permanent SSI registration. It is the case of the petitioner that the

petitioner commenced production with effect from 30.11.1994. In fact, the petitioner made an application on 12.4.93 to the then Panchayat seeking permission to construct factory premises and consequently to grant exemption from payment of octroi to the petitioner under Rule 36 of the Rules for a period of 5 years from the date of first lot of manufacture of goods. The then Panchayat on 15.5.93 granted permission to construct factory in view of resolution, dated 5.5.93. The petitioner filed application under Section 36 for getting exemption from payment of octroi on 13.4.93 and the Panchayat granted exemption from payment of octroi for a period of 5 years starting from 1.5.93 to 30.4.98. After enjoying the benefit for a considerable period the petitioner for the first time on 29.4.98 made an application to the respondent-Municipality for extending the said benefit for a period of 7 years. In fact, on May 21, 1998 the petitioner addressed a notice through his advocate to the respondent-Municipality. However, in this case also the respondent-Municipality rejected the request of the petitioner by reply dated 3.6.98.

5. Petitioners of both the petitions have challenged the said action of the respondents by way of these petitions.

6. Mr.Rajesh Dave, Ld.Advocate for petitioners after inviting my attention to Rule 36 of the Rules submitted that the Rule continues to apply even after conversion of Panchayat into Nagar Panchayat. It is the submission of Mr.Dave that the benefits already accrued and granted can not be taken away by the respondents.

7. Mr.Harin Raval, Ld.advocate for respondent No.1, on the other hand, submitted that the petitions are liable to be rejected on the ground of delay, laches and acquiescence. Mr.Raval submitted that in view of conversion of Panchayat into Nagarpalika and since the Nagarpalika has framed new Rules which have been approved by the Regional Director of Municipalities, Rajkot, the petitioners have no cause of action, and therefore, the petitioners are not entitled to claim any relief. Mr.Raval finally submitted that benefits have been granted to the petitioners on the basis of dates which were given by the petitioners themselves and merely because the petitioners having enjoyed the benefits for all these years can not have any legal right to claim further extension of benefits.

8. Now there is no dispute about the fact that with effect from 15.4.94 the erstwhile Panchayat, which was governed under the Gujarat Panchayats Act, 1961, has been converted into Nagar Panchayat, i.e. Municipality, and therefore the respondent is now governed by the provisions of Gujarat Municipalities Act, 1961 as amended in the year 1993-94. Under the provisions of Section 276 (1)(a) of the Gujarat Panchayats Act it has been provided "appointed day" means the date as the State Government may, by notification in the Official Gazette, appoint, and the said "appointed day" is 15.4.1994. Sub-section (2) of Section 276 provides that "with effect on, and from the appointed day the Gujarat Panchayats Act, 1961 shall stand repealed and the following consequences as enumerated in clauses (a) to (m) of Subsection (2) of Section 276(2) shall ensue. Clause (j) is relevant for our purpose provides that "any appointment, notification, notice, tax, fee, order, scheme, licence, permission, rule-by-law, regulation or form made, issued, imposed or granted in respect of the local area of an existing panchayat under the repealed Act and in force immediately before the appointed day, shall, in so far as it is not inconsistent with the provisions of this Act continue to be in force as if made, issued, imposed or granted in respect of the corresponding local area of the successor Panchayat under this Act until superseded or modified by any appointment, notification, notice, tax, fee, order, scheme, licence, permission, rule, bye-law, regulation or form made, issued imposed or granted under this Act of 1993 and it is further provided that in case of difficulties the power is conferred upon section 288 that in the exercise of power under section 278 the State of Gujarat has issued notification, dated 15.4.98 . The provisions of said notification are in pari-materia with the provisions of sub-section (2) of Section 276 of the said Act. In view of the said notification and the provisions of the said Act of 1993, old Rules, Orders, exemption continued till the same are replaced by the new Rules, Orders or exemption. It is also on record that on and from conversion of the respondent No.1 into Nagarpalika, the Rules under section 271(a) of the Gujarat Municipalities Act have been framed and approved by the Regional Director of Municipalities on 10.4.96 and have come into force from 1.8.96.

9. Having gone through the facts of the case and the provisions of law as aforesaid, it appears that there is no such provision for the grant or continuance of exemption under the existing Rules of the respondent No.1-Nagarpalika sanctioned by the State Government. On

the contrary, the said Rule provides for exemption only for a period of 4 years from the date of its establishment and three years from the date of production. In view of this, in my opinion, it is not open to the petitioner to contend that it shall continue to get the benefit of exemption under Rule 36 of the Rules which, in my view, is not applicable on and from 16.5.96 in view of section 276(2)(a) of the said Act read with notification, dated 15.4.96 produced along with affidavit-in-reply vide Annexure 8.

10. Apart from this, the petitioners having already enjoyed the benefits of exemption from payment of octroi almost for the period for which it was granted without making any grievance for the period for which they were granted, can not be permitted to claim extension of period for exemption from payment of octroi on the ground that under the provisions of Rules they are entitled for 7 years period if it starts from the date of establishment. Having gone through the said dates it is also not possible for this court to appreciate the documents on record and to record a specific finding about the establishment. Under the circumstances, no positive finding can be recorded about the same, and therefore, it is not possible for this court even to decide the question as to whether the petitioners are entitled to have extension of period upto 7 years. In view of the above, I see no merit in any of the submissions of the petitioners and petitions are rejected. Rule in each petition is discharged with no order as to costs. Ad-interim relief granted earlier shall continue for a period of 15 days on the same terms and conditions even though objected by Mr.Raval.

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